

EXCERPTED EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION
VITO A. PESCE, on behalf)
of himself and all)
others similarly situated,)
Plaintiffs,)
vs.) No. 11-cv-01379
FIRST CREDIT SERVICES,)
INC. d/b/a ACCOUNTS)
RECEIVABLE TECHNOLOGIES,)
Defendant.)

The deposition of VITO PESCE, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Shannon R. Roberts, a notary public within and for the County of Will and State of Illinois, at 222 North LaSalle Street, Suite 300, Illinois, on July 25, 2011, at the hour of 1:24 p.m.
Reported by: Shannon R. Roberts, CSR
License No.: 084-004669

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I N D E X	
WITNESS	EXAMINATION
VITO PESCE	
BY MR. VLAHAKIS	5
BY MR. KEOGH	54
FURTHER BY MR. VLAHAKIS	59

E X H I B I T S	
NUMBER	MARKED FOR ID
PESCE Deposition Exhibit	
No. 1	6
No. 2	8
No. 3	10
No. 4	19
No. 5	32
No. 6	49

3

1 APPEARANCES:
2 KEOGH LAW, LTD.
3 BY: MR. KEITH J. KEOGH
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6 Chicago, Illinois 60606
7 (312) 780-7363
8 Representing the Plaintiffs;
9
10 HINSHAW & CULBERTSON, LLP
11 BY: MR. JAMES C. VLAHAKIS
12 222 North LaSalle Street
13 Suite 300
14 Chicago, Illinois 60601
15 (312) 704-3000
16 Representing the Defendant.
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22
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1 (WHEREUPON, the witness was duly
2 sworn.)
3 MR. VLAHAKIS: Could you state your full name
4 for the record, please.
5 THE WITNESS: Vito Angelo Pesce.
6 MR. VLAHAKIS: Mr. Pesce, have you ever given
7 a deposition before?
8 THE WITNESS: Yes.
9 MR. VLAHAKIS: What case was that involving?
10 THE WITNESS: It was a traffic accident.
11 MR. VLAHAKIS: So it was a pretty quick
12 deposition?
13 THE WITNESS: Yes, very quick.
14 MR. VLAHAKIS: I just want to lay down some
15 ground rules. That's why I was asking.
16 Typically, we ask that you wait until I'm done
17 asking the question before you give your answer.
18 That allows the court reporter to take down
19 testimony a lot easier.
20 Do you understand that?
21 THE WITNESS: Uh-huh.
22 MR. VLAHAKIS: And we need to say yes or no
23 or verbal answers.
24 THE WITNESS: Yes.

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1 (Pages 1 to 4)

<p>1 MR. VLAHAKIS: If you don't understand a 2 question because it's either long, confusing or 3 it sounds like legalese, let me know and I'll 4 try to rephrase the question so to make sure 5 that when I'm asking you something, you fully 6 understand it before you give an answer. 7 Are you okay with that? 8 THE WITNESS: Yes. 9 MR. VLAHAKIS: If you need to take a break to 10 go to the bathroom, let me know, we can do that. 11 If you need the court reporter to read back a 12 prior answer, she can do that. If you want to 13 hear back my question, she can also do that. 14 Do you understand? 15 THE WITNESS: Yes. 16 VITO PESCE, 17 having been first duly sworn, was examined and 18 testified as follows: 19 EXAMINATION 20 BY MR. VLAHAKIS: 21 Q. I would like to ask you a few quick 22 questions regarding some of the settlement 23 offers that have been made in this case. I have 24 made a copy of these letters for you and for</p> <p style="text-align: right;">5</p>	<p>1 later date under 408, but I have no intention to 2 having these published in the public record at 3 this time. 4 I'm just going to ask a very limited 5 amount of questions of you, Mr. Pesce. 6 BY MR. VLAHAKIS: 7 Q. Mr. Pesce, have you seen this document 8 before today's deposition? 9 A. Yes. 10 Q. Do you recall when you saw it? 11 A. I believe it was the same day it was 12 issued. 13 Q. And how did you receive a copy of this 14 letter? 15 A. Electronic. 16 Q. And if you need time to refamiliarize 17 yourself with the document, you can go ahead and 18 review it and tell me when you're done looking 19 it over. 20 A. I'm pretty familiar with it. 21 Q. Okay. In Paragraph 1 of this letter, 22 you see a statement regarding a confidential 23 payment to plaintiff. Do you understand that 24 that payment amount that's identified there was</p> <p style="text-align: right;">7</p>
<p>1 your attorney. 2 This will be Exhibit 1. 3 (WHEREUPON, PESCE Deposition 4 Exhibit No. 1 was marked for 5 identification.) 6 THE WITNESS: I would like to go to the 7 restroom before we start. 8 MR. VLAHAKIS: If you want to go now, that's 9 fine. 10 MR. KEOGH: Why don't you go now before he 11 asks you a question. 12 THE WITNESS: Okay. 13 (WHEREUPON, a short break was 14 taken.) 15 MR. KEOGH: I just want to state for the 16 record Exhibit 1 is a settlement letter. 17 Pursuant to Rule 408, any settlement discussions 18 is non-discoverable and won't lead to relevant 19 information. With that general objection to any 20 questions regarding this, you can ask your 21 questions. 22 MR. VLAHAKIS: Fair enough. I agree with the 23 concept that these would be arguably 24 confidential. The scope might be decided at a</p> <p style="text-align: right;">6</p>	<p>1 an offer that my client made to you to settle 2 your TCPA claims? 3 A. I understand. 4 Q. And am I correct that you rejected that 5 settlement overture that's contained in 6 Paragraph 1 of this July 18, 2011 letter? 7 A. Yes. 8 Q. Without revealing any attorney/client 9 privilege communications you had with your 10 attorney, could you explain to me why you 11 rejected the settlement figure that's identified 12 in Paragraph 1 of the July 18, 2011 letter? 13 A. Well, it's a class case. It's not 14 about me individually. 15 Q. Anything else other than that? 16 A. That's pretty much it. 17 Q. I'd like to show you copies of an 18 exhibit marked as 2. 19 (WHEREUPON, PESCE Deposition 20 Exhibit No. 2 was marked for 21 identification.) 22 MR. KEOGH: For the record Exhibit 2 is also 23 a settlement letter and I will object pursuant 24 to 408. I don't think it's relevant -- related</p> <p style="text-align: right;">8</p>

<p>1 answer today to the various questions I asked 2 you where it seemed like your answer was you 3 don't recall? 4 A. Just maybe being a little more cautious 5 in my answering. 6 Q. Did you review your notes in 7 preparation for today's deposition? 8 A. I did. 9 Q. Did you bring them with you at all? 10 A. No, I did not. 11 Q. But your attorney does have copies of 12 them? 13 A. Yes. 14 Q. Is your more accurate answer today that 15 you don't recall or do you believe that your 16 answer in Paragraph 13 that you never provided 17 your cell phone number is the more accurate 18 answer? 19 A. I believe I never provided my cell 20 phone number. 21 Q. Did you specifically review your notes 22 today to determine whether or not there's a 23 mention in your notes regarding your cell phone? 24 A. I did not review my notes today.</p> <p style="text-align: right;">53</p>	<p>1 A. Correct. 2 Q. And you understand the power of an auto 3 dialer or preemptive dialer and how often they 4 can reach a person? 5 A. Correct. 6 Q. Now, counsel showed you a collection of 7 notes from his client as Exhibit 3. Can you 8 grab those, please? Can you turn to the second 9 page? He asked you a variety of questions 10 regarding the -- a March 9 and March 16 entry, 11 correct? 12 A. Correct. 13 Q. And I believe you testified you weren't 14 sure about the dates, but you did speak to them 15 a couple times, correct? 16 A. Correct. 17 Q. One, a Lisa Henry at least once; is 18 that correct? 19 A. Correct. 20 Q. Now, putting aside the dates, take a 21 look at the March 9 entry. Is it true that 22 you're asking for written verification of the 23 debt? 24 A. Yes.</p> <p style="text-align: right;">55</p>
<p>1 MR. VLAHAKIS: I think I'm almost done, but 2 there's one document I want to look at that 3 I didn't bring down. 4 If we can take five minutes? 5 MR. KEOGH: Sure. 6 (WHEREUPON, a short break was 7 taken.) 8 MR. VLAHAKIS: I'm done. Go ahead. 9 EXAMINATION 10 BY MR. KEOGH: 11 Q. Mr. Pesce, counsel asked you what you 12 do for a living. You said IT management. Can 13 you elaborate, please? 14 A. Data center management, telephony 15 oversight, databases, software. 16 Q. For what company? 17 A. CNA Insurance. 18 Q. And as part of that oversight for 19 database management and telephony, do you have 20 any experience dealing with preemptive dialers 21 or auto dialers? 22 A. I'm familiar with them. 23 Q. You're familiar with them as part of 24 your employment?</p> <p style="text-align: right;">54</p>	<p>1 Q. Is there any mention of you asking them 2 to call back your cell phone? 3 A. No. 4 Q. What are you asking for according to 5 these notes? 6 A. I wanted the physical proof that I owed 7 the debt. 8 Q. Would a call back been good enough for 9 you? 10 A. No. 11 Q. According to these notes, you called 12 back again on March 16; is that correct? 13 A. Correct. 14 Q. And it's correct not as to the date, 15 but as to the fact that you did call back? 16 A. Yes. 17 Q. And, once again, what did you ask for 18 on that second call? 19 A. Documents proving that I owed the debt. 20 Q. And if they called you back saying we 21 checked, you owed a debt, would that have been 22 good enough? 23 A. No, it would not. 24 Q. Is there any reason at this point for</p> <p style="text-align: right;">56</p>

<p>1 you to provide Fair [sic] Credit Services your 2 cell phone number? 3 A. No. 4 Q. And did you provide Fair [sic] Credit 5 Services your cell phone number? 6 MR. VLAHAKIS: Objection, asked and answered. 7 THE WITNESS: No. They obviously had it if 8 you look at the notes. 9 BY MR. KEOGH: 10 Q. And you said they obviously had it. If 11 you turn to the first page of Exhibit 3, it 12 shows a phone call to (847) 809-9705; is that 13 correct? 14 A. Yes. 15 Q. And that's -- there's a date of 16 March 3; is that correct, on that circled entry 17 showing the call? 18 A. March 1. 19 Q. Sorry. Thank you. 20 In that group exhibit, which I believe 21 is Exhibit 5, counsel asked you to look at two 22 letters that you wrote Nuvell; do you recall 23 those questions? 24 A. Yes.</p> <p style="text-align: right;">57</p>	<p>1 paid Saab Financial. So I wanted hard-copy 2 proof that I owed the debt and you owned the 3 debt. 4 Q. You said you don't give out your cell 5 phone willy-nilly. What do you mean by that? 6 A. I'm cautious on it. It's even on the 7 Federal Do-not-call list. 8 Q. I believe you testified that you 9 reviewed the complaint in this case before it 10 was filed, correct? 11 A. Correct. 12 Q. Did you have access to your notes when 13 you were reviewing this complaint? 14 A. Yes. 15 MR. KEOGH: I have no further questions for 16 the witness. 17 FURTHER EXAMINATION 18 BY MR. VLAHAKIS: 19 Q. Mr. Pesce, do you have an understanding 20 of what the -- the amount of statutory damages 21 that the TCPA provides for each call to a cell 22 phone in violation of the TCPA? 23 MR. KEOGH: Objection, outside the scope of 24 cross. You can answer.</p> <p style="text-align: right;">59</p>
<p>1 Q. I'm going to hand you those two letters 2 dated March 1, 2010, and March 17, 2010. Would 3 you take a second to look at those documents? 4 A. Okay. 5 Q. Now, what are those documents 6 requesting? 7 A. Proof. 8 Q. Proof of what? 9 A. Proof that I owed the debt. 10 Q. And you're asking Nuvell to send you 11 proof, correct? 12 A. Correct. 13 Q. Did you provide any phone numbers on 14 those letters? 15 A. No, I did not. 16 Q. Why not? 17 A. Well, I wanted hard-copy proof, and 18 I don't just give out my cell phone willy-nilly. 19 But I basically wanted hard-copy proof that 20 I owed this debt and that Nuvell -- I never 21 heard of Nuvell. I don't even know who that 22 company is. Even today they're supposedly not 23 even a company anymore, so I still don't know 24 who Nuvell is. I never paid Nuvell. I always</p> <p style="text-align: right;">58</p>	<p>1 THE WITNESS: I believe I seen some numbers, 2 but not -- 3 BY MR. VLAHAKIS: 4 Q. Do you recall what number those may 5 have been? 6 A. I don't recall. 7 Q. Does \$500 per violation ring a bell? 8 A. That could be. 9 Q. Do you have any understanding as to 10 whether damages can be trebled under the TCPA to 11 \$1500 per call? 12 A. I'm not a hundred percent familiar with 13 the law. 14 Q. If you have an understanding that the 15 TCPA can award \$500 per call, do you have an 16 understanding of what your maximum recovery 17 could be at the end of the case based on the 18 amount of calls to your cell phone? 19 A. Generally. 20 Q. What's your general understanding? 21 A. Anywhere between -- I don't even know. 22 Again, I said it's not about me. I don't care 23 about what numbers I get individually. 24 Q. So is it your understanding in terms of</p> <p style="text-align: right;">60</p>

1 math that if you had three phone calls, the
2 minimum recovery you could get would be 500 per
3 call or \$1500?

4 A. Yeah.

5 Q. Is that a yes?

6 A. Sure, if that's how the law reads.

7 Q. And then at the maximum recovery at
8 \$1500 per call, the most you could receive would
9 be \$4500 for three calls? Is that a yes?

10 A. Yeah, if that's how the math reads.

11 MR. VLAHAKIS: I'm done.

12 MR. KEOGH: We'll reserve signature.

13 (FURTHER DEPONENT SAITH NAUGHT.)

14 (Proceedings concluded at
15 2:58 p.m.)

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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4
5 VITO A. PESCE, on behalf)
6 of himself and all others)
7 similarly situated,)
8 Plaintiffs,)

9 vs.) NO. 11-cv-01379
10 FIRST CREDIT SERVICES, INC.)
11 d/b/a ACCOUNTS RECEIVABLE)
12 TECHNOLOGIES,)
13 Defendant.)

14 This is to certify that I have read the
15 transcript of my deposition taken in the
16 above-entitled cause by Shannon R. Roberts,
17 Certified Shorthand Reporter, on July 25, 2011,
18 and that the foregoing transcript accurately
19 states the questions asked and the answers given
20 by me as they now appear.

21 _____
22 VITO PESCE
23 SUBSCRIBED AND SWORN TO
24 before me this _____ day
of _____ 2011.

Notary Public

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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF WILL)

4 I, Shannon R. Roberts, a notary public within

5 and for the County of Will and State of

6 Illinois, do hereby certify that heretofore,

7 to-wit, on July 25, 2011, personally appeared

8 before me, at 222 North LaSalle Street,

9 Suite 300, Chicago, Illinois, VITO PESCE, in a

10 cause now pending and undetermined in the

11 Circuit Court of Cook County, Illinois, wherein

12 VITO A. PESCE, on behalf of himself and all

13 others similarly situated are the Plaintiffs,

14 and FIRST CREDIT SERVICES, INC. d/b/a ACCOUNTS

15 RECEIVABLE TECHNOLOGIES is the Defendant.

16 I further certify that the said witness was
17 first duly sworn to testify the truth, the whole
18 truth and nothing but the truth in the cause
19 aforesaid; that the testimony then given by said
20 witness was reported stenographically by me in
21 the presence of the said witness, and afterwards
22 reduced to typewriting by Computer-Aided
23 Transcription, and the foregoing is a true and
24 correct transcript of the testimony so given by

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1 said witness as aforesaid.

2 I further certify that the signature to the
3 foregoing deposition was reserved by counsel for
4 the respective parties.

5 I further certify that the taking of this
6 deposition was pursuant to Notice, and that
7 there were present at the deposition the
8 attorneys hereinbefore mentioned.

9 I further certify that I am not counsel for
10 nor in any way related to the parties to this
11 suit, nor am I in any way interested in the
12 outcome thereof.

13 IN TESTIMONY WHEREOF: I have hereunto set my
14 hand and affixed my notarial seal this 8th day
15 of August, 2011.

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NOTARY PUBLIC, WILL COUNTY, ILLINOIS

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